STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

May 16, 1949

To Norman U. Greenlaw, Commissioner of Institutional Service

I have your memo of May 13th, attaching your file in the case of a parolee from the State School for Girls who is at present receiving care and treatment in the New Hampshire State (Mental) Hospital. I note that the New Hampshire State Hospital in a letter to the Commissioner's office dated March 31st, requested authorization for the transfer of this patient to one of our State institutions, if it is found that she is a resident of this State.

Of course she is a resident of this State, and the provisions of Section 117 of Chapter 23 of the Revised Statutes, to which you refer, apply only to patients who have been committed in another State and have never been inmates, or in the custody, of a Maine institution. This girl is a parolee and is an inmate of the State School for Girls, according to the certificate of Miss Stevens, the Superintendent; therefore she should be transferred back to the State School for Girls, and if she is incorrigible, as has been stated in the history of her case attached to her papers, a transfer to the Reformatory for Women can be made under the statute. Section 117 would apply where no commitment had ever been made in the State of Maine; but the State of Maine certainly has jurisdiction over this girl who has violated her parole, and she should be returned to the custody of the institution where she was committed in the State of Maine, regardless of whether or not she has a settlement in a Maine municipality acknowledged by the municipal officers thereof. The girl's parents have always been residents of the State of Maine; she was born in Maine, has always lived in Maine, and was committed to the State School for Girls in Maine by Maine authorities, regardless of whether or not her father has established a pauper residence in any municipality since he left Columbia Falls eight years ago.

RALPH W. FARRIS
Attorney General

May 17, 1949

To C. L. Treworgy, Secretary, Racing Commission
Re: L.D. 1388, as passed by the 94th Legislature, Chapter 388, P.L. 1949

I have your memo of May 16th, stating that the Racing Commission would like a ruling on Sections 9 and 12 of Chapter 77 of the Revised Statutes as amended by Chapter 388 of the Public Laws of 1949, which became effective when approved by the Governor on May 7th, by reason of the emergency clause attached thereto. I note that the Commission meets on May 18, 1949, at 10 A.M. and would like to have a ruling from this office on the following points:

Question 1. "Section 9 states that no meeting shall be allowed for more than 6 days in any 28-day period, except night harness racing as hereinafter defined and except day racing as provided in the last paragraph of section 12, etc. The last paragraph of section 12 states that during the remaining time, if any, between the 15th of June and Oct. 15th, the commission may grant to a track or tracks a license to operate day or night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph."

In answer to Question 1 I will state that the wording of Section 9 was changed by a late amendment presented in the legislature, which inserted the following language, "except night harness racing as hereinafter defined and except day harness racing as provided in the last paragraph of section 12" and wrote in the word "day" in two places in said section 9.

Night harness racing as defined in Section 12 provides that "notwithstanding anything in this chapter to the contrary, the Commission shall issue a license, where pari mutuel betting is permitted, to hold night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year, daily except Sundays, between the hours of 6 P.M. and midnight. The commission *shall* grant such *licenses* for night harness racing to such *applicants* only, who shall have and maintain adequate pari mutuel facilities, which facilities shall include a totalizator or its equivalent where odds will change at least once every 2 minutes, adequate stable facilities for not less than 400 horses, and shall have and maintain a track adequate in width to start 8 horses abreast. Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track." That is the legislative definition of night harness racing, notwithstanding anything to the contrary in the Racing Act; and you will note that the words "The commission shall grant such licenses" are mandatory and are in the plural number—"to such applicants only" who shall have qualified under the definition above quoted. That is, they must maintain adequate pari mutuel facilities, a totalizator or its equivalent where odds will change at least once every two minutes, stable facilities for not less than 400 horses, and a track wide enough to start 8 horses abreast, and pay purses at least equal to minimum purses paid at any other New England harness racing track.

Therefore it is my opinion that the Commission should grant licenses to all applicants who can qualify under this definition of night harness racing to hold night harness races or meets for a period of 8 weeks between June 15th and October 15th of each year.

The last paragraph of Section 5 provides for the remaining time of the 8-week period of night harness racing between June 15th and October 15th, except that the legislature has inserted the words "day or" before the words "night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph," which specifications I have just outlined to you.

Question 2. "The next to the last paragraph of section 12, which is the new paragraph dealing with the 8-week night harness racing meets, is not clear as to whether there can be two or more 8-week meets, at the same track providing the applicant lives up to the specifications of the law. Also what would be the equivalent to a totalizator?"

In answer to Question 2 I will state that my answer to Question 1 partly takes care of the answer to Question 2, except that it is my opinion that the statute does not provide that the 8-week meets shall be limited to one track, provided the applicant meets the specifications laid down in Section 5 of the 1949 act. I again call your special attention to the language which provides that those applicants who meet the specifications *shall be granted* licenses, that is, if they have met the definition of the night harness racing section.

It is my opinion that any board which is so operated that odds will change at least once every two minutes would be equivalent to a totalizator.

Question 3. "The first sentence of section 12 states in part that between the dates of the 1st Monday in August and October 20, no license shall be issued to anyone but an agricultural fair association, except night harness racing as hereinafter defined. The last paragraph of Section 12 now states that the commission may grant a license to operate day or night harness racing between June 15th and October 15th."

In order to interpret the meaning of Section 12 as amended by Sections 4 and 5 of Chapter 388 of the Public Laws of 1949, we must read the two amendments together. It is my opinion that the legislature intended that the second paragraph of Section 5 should apply to the agricultural fairs in so far as day racing is concerned, and a license can be issued under this section for racing only to agricultural fair associations between the first Monday of August and October 20th. It is my opinion that the legislature did not intend that night harness racing should in any way interfere with the licenses granted to agricultural fair associations under Section 12 of Chapter 77, R. S. It did not intend agricultural fair associations to meet the specifications set forth in the night harness racing definition.

The new draft of the bill, which was L.D. 1388, did not include day harness racing in the second paragraph of Section 5 of the bill and by amendment "day or" was added after the word "operate" and before the word "night," so as to take care of the agricultural fairs.

It is quite apparent from reading Chapter 388 and the questions and answers here outlined that there will be no remaining period of the time for night harness racing if licenses are granted to two or more applicants under the first paragraph of Section 5 authorizing and defining night harness racing. However, the granting of licenses in my opinion is an administrative function of the Racing Commission, because there is nothing in the statute which limits the number of applicants for licenses for night harness racing or the number of tracks, provided the applicants can qualify under the definition; and the section specifically provides that the commission *shall* grant such licenses to those who apply and have met all the specifications in the definition of night harness racing.

RALPH W. FARRIS
Attorney General

May 18, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 24 of Chapter 25

I acknowledge your memo of May 12th requesting an interpretation of Section 24 of Chapter 25 and asking specifically if the term "transportation company" as used in the first sentence of said section includes taxi companies.

I find an Oklahoma case, which is *Clark vs. Walworth*, 176 Okla. 349, which held that a private citizen operating as a public service entity, seeking to render a public service and for hire absolves himself from the distinct rights of a private citizen as regards his business, with respect to which he becomes a "transportation company" within the meaning of the statute providing that action may be commenced against a transportation company in any county in which a cause of action or some part thereof accrued.